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# FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of: )  
 )  
UNDER HIS DIRECTION, INC. ) MM DOCKET No.: 96-70  
 )  
Order to Show Cause Why the )  
License for Station KUHD(AM) )  
Port Neches, Texas Should Not )  
be Revoked )

Volume: 1  
Pages: 1 through 18  
Place: Washington, D.C.  
Date: May 8, 1996

## HERITAGE REPORTING CORPORATION

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MAY 15 '96

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DEPARTMENT OF THE  
SECRETARY

In Re Applications of: )  
 ) MM DOCKET No.: 96-70  
UNDER HIS DIRECTION, INC. )  
 )  
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License for Station KUHD(AM) )  
Port Neches, Texas Should Not )  
be Revoked )

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Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C. 20554

Wednesday,  
May 8, 1996

The parties met, pursuant to the notice of the  
Judge, at 9:00 a.m.

BEFORE: HON. Edward Luton  
Administrative Law Judge

APPEARANCES:

On behalf of Under His Direction, Inc.:

MARK A. PETERSON (via telephone)  
Under His Direction, Inc.  
Rt. 6, Box 979 K  
Wiener Drive  
Beaumont, Texas 77705  
(409) 721-9394

On Behalf of FCC:

ROBERT A. ZAUNER, ESQ.  
FCC/MMB  
2025 M Street, N.W.  
Washington, D.C. 20554  
(202) 418-1796

Heritage Reporting Corporation  
(202) 628-4888

APPEARANCES (Cont'd.):

On behalf of Vision Latina, Inc.:

SCOTT C. CINNAMON, ESQ.  
Brown, Nietert & Kaufman  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036  
(202) 887-0600

I N D E X

WITNESSES:                      DIRECT   CROSS   REDIRECT   RECROSS   VOIR DIRE  
None.

E X H I B I T S

IDENTIFIED                      RECEIVED                      REJECTED  
None.

Hearing Began: 9:00 a.m.                      Hearing Ended: 9:25 a.m.

1                   P R O C E E D I N G S

2                   MR. CINNAMON: Your Honor, if I could have one  
3 more minute? We'll do -- I'll alert Mr. Peterson to call  
4 up. Maybe we don't have to. That should be your appearance  
5 right now.

6                   JUDGE LUTON: All right. Hello?

7                   MR. PETERSON: Yes, this is Mark Peterson.

8                   JUDGE LUTON: All right, you are going to  
9 participate in our conference this morning, Mr. Peterson, on  
10 behalf -- the licensee?

11                  MR. PETERSON: Yes, I am the licensee.

12                  JUDGE LUTON: You are the licensee, Under His  
13 Direction, Inc.?

14                  MR. PETERSON: Yes, sir.

15                  JUDGE LUTON: Good to hear from you.

16                  MR. PETERSON: Thank you.

17                  JUDGE LUTON: Other appearances?

18                  MR. CINNAMON: Your Honor, I'm Scott Cinnamon.

19 I'm appearing on behalf of the party that's filed the  
20 petition to intervene in this matter, Vision Latina, Inc.

21                  JUDGE LUTON: You are not representing a present  
22 party to the case?

23                  MR. CINNAMON: No.

24                  JUDGE LUTON: I understand that there has been a  
25 petition, I believe, to intervene which has been filed which

1 the Bureau expects to oppose. Consequently -- and you are  
2 not really speaking on behalf of the licensee?

3 MR. CINNAMON: No.

4 JUDGE LUTON: Even though some representations  
5 have been made on the licensee's behalf in some things that  
6 I've seen and that I've heard. Whatever your interest is in  
7 the case, it will just hold until the things develop from  
8 this point on. A non-party has, of course, no basis on  
9 which to participate in anything.

10 Mr. Peterson --

11 MR. ZAUNER: Your Honor, on behalf of the Mass  
12 Media Bureau, Robert A. Zauner.

13 JUDGE LUTON: I don't want to forget the Bureau,  
14 the instigator of all of this. Thank you, Mr. Zauner.

15 Mr. Peterson, you are being permitted to  
16 participate by telephone this morning. I've got to note,  
17 however, that this just isn't the way the rules contemplated  
18 that it should work. A request to participate by speaker-  
19 phone should have been made in writing at some reasonable  
20 time prior to yesterday, when I first heard of this. And it  
21 would have given me an opportunity to decide whether or not  
22 to permit this kind of participation.

23 MR. PETERSON: Well, sir --

24 JUDGE LUTON: Instead, what I get is a surprise  
25 conference call yesterday in which Mr. Cinnamon and Mr.

1       Zauner indicate to me that you desired to participate by  
2       telephone. I had heard nothing from you yourself.

3               So, we are going to go ahead and permit this  
4       participation this time but, henceforth, we are going to  
5       follow the rules strictly.

6               MR. PETERSON: Thank you.

7               JUDGE LUTON: In every respect.

8               MR. PETERSON: Thank you.

9               JUDGE LUTON: Mr. Zauner, I assume that nothing  
10       has changed from yesterday. The Bureau is still of a mind  
11       to revoke the license?

12              MR. ZAUNER: That is correct, Your Honor. We  
13       have, of course, the order to show cause and we do have a  
14       notice of appearance that was filed by Mark Peterson, and it  
15       was transmitted to the Commission under a cover letter dated  
16       May 1, 1996. And it was signed by Mark Peterson. My  
17       presumption is that Mr. Peterson is not represented by  
18       counsel in this matter? Is that correct, Your Honor.

19              JUDGE LUTON: Well, that is certainly a reasonable  
20       assumption. It seems to me since the written notice of  
21       appearance was delivered by cover letter dated May 1,  
22       delivered to the Commission by Brown, Neitert & Kaufman,  
23       Chtd., who expressly say they were submitting the documents  
24       to the Commission as a courtesy to the licensee, pretty  
25       clearly that firm is not representing Mr. Peterson or Under

1 His Direction. Or it was not at the time. So Mr. Peterson,  
2 the question is, is it correct that Under His Direction is  
3 not represented by counsel in this case?

4 MR. PETERSON: It is correct that I do not have an  
5 attorney employed in this case, Your Honor. I, however, as  
6 the licensee, wanting to see this matter transferred to  
7 Vision Latina, and working jointly with them through their  
8 own counsel and representation. And they have been kind  
9 enough to extend their services to me gratis because we  
10 don't have the financial abilities to pay for legal  
11 representation in Washington.

12 JUDGE LUTON: Okay. And Vision Latina does have  
13 an interest which it has expressed in a pleading which is  
14 pending. I understand that.

15 MR. PETERSON: Okay.

16 JUDGE LUTON: As this case proceeds, I'm going to  
17 need to hear from you, Mr. Peterson. It's really quite  
18 awkward to try to decide what Mr. Peterson's position is if  
19 I'm hearing that position stated by someone who may have  
20 some sort of interest in the case, but who is not a party in  
21 the case.

22 MR. PETERSON: Well, Your Honor, I feel confident  
23 that I can state my position and where we stand on the  
24 license and how we feel about it.

25 JUDGE LUTON: Well, that's fine. That's the way



1 I'd prefer to have it, really.

2 MR. PETERSON: I can do that.

3 JUDGE LUTON: All right. I won't ask you to do  
4 that today, no need.

5 MR. PETERSON: Okay.

6 JUDGE LUTON: As everybody should be aware, the  
7 hearing is already scheduled in this case. It's scheduled  
8 for July 24. And that seems ample time to prepare for what  
9 looks like a fairly simple case. So I would ask the parties  
10 to be prepared to go to hearing on July the 24th, just as  
11 the assignment order provided.

12 I'm going to ask for the written direct testimony  
13 in this case, as I do in all the cases here. I'm going to  
14 ask that testimony be exchanged -- Mr. Peterson, do you  
15 understand what I'm talking about?

16 MR. PETERSON: Yes, sir.

17 JUDGE LUTON: Okay, good. I'm going to ask that  
18 that testimony be exchanged by the parties, written  
19 testimony by Tuesday, July 16. That's a little more than a  
20 week prior to the hearing. And then by July 2nd -- no, no,  
21 I'm sorry, I haven't got that right. I said the testimony  
22 should be exchanged. What I intended to say, and what I am  
23 now saying, is that witnesses that the parties expect to  
24 call should be named and those names exchanged by July 16,  
25 approximately a week prior to the hearing.

1           And then two weeks prior to the hearing, is the  
2     time that I would like for the parties to exchange their  
3     written direct testimony.

4           MR. PETERSON:   And that date would be --?

5           JUDGE LUTON:    July 2nd.

6           MR. PETERSON:    July 2nd.

7           JUDGE LUTON:    Just before the holiday.

8           MR. PETERSON:    Okay.

9           JUDGE LUTON:    Okay, so July 2nd exchange written  
10    testimony.   July 16 give notification of the names of  
11    witnesses that you intend to examine and that you wish to  
12    examine at the hearing.   And then the hearing itself on July  
13    24th.   I don't see any reason why we shouldn't be able to  
14    keep to those dates.   Of course, if things should happen in  
15    our lives in such a way that we need to change, we can do  
16    that.

17          MR. PETERSON:    Your Honor?

18          JUDGE LUTON:    Yes, sir.

19          MR. PETERSON:    Since we do not have the financial  
20    wherewithal to be in Washington, what is the possibility of  
21    this again being by phone conference and should we put it in  
22    writing to request it?

23          JUDGE LUTON:    Well, you should make the request in  
24    writing so that -- well, because the rules require it, but  
25    beyond that, if somebody wants to oppose that request, they

1 should have the opportunity to do it in writing.

2 MR. PETERSON: Okay.

3 JUDGE LUTON: And I'll have the opportunity to  
4 consider the writings? Is it a possibility? I don't know.  
5 Maybe, I really can't say. It's just something that if you  
6 want to attempt it, go ahead and attempt it, but don't be  
7 surprised if it doesn't work. Let's not pass any kind of  
8 judgment right now. I just don't know. There are cases,  
9 and there have been cases in which hearings have been  
10 conducted with the licensee off someplace and participating  
11 by speaker-phone. So it would not be at all unusual if that  
12 were to happen in this case. That's about all I can say,  
13 Mr. Peterson.

14 MR. PETERSON: Thank you.

15 JUDGE LUTON: All right.

16 MR. ZAUNER: Your Honor?

17 JUDGE LUTON: Yes.

18 MR. ZAUNER: If I may say something. Issue one is  
19 to determine whether Under His Direction has the capability  
20 and intent to expeditiously resume the broadcast operations  
21 of KUHD-AM, consistent with the Commission's rules, which  
22 seem to me that this issue might be susceptible to a summary  
23 decision motion, or something of that nature. If the  
24 licensee could come in and show that they do have the  
25 capability and the intent and can provide us with a schedule

1 showing a definite time in which they would put the station  
2 back on the air, this is the kind of thing that I think that  
3 the Commission is looking to see from licensees in this  
4 condition.

5 JUDGE LUTON: Did you hear that, Mr. Peterson?

6 MR. PETERSON: I heard bits and pieces of it, but  
7 did not hear all of it clearly.

8 JUDGE LUTON: I think you ought to -- it would be  
9 well if you heard all of that. There is some advice there  
10 for Under His Direction, I believe. You will receive a  
11 transcript of --

12 MR. PETERSON: It sounded favorable, from what I  
13 was hearing.

14 JUDGE LUTON: Yes.

15 MR. ZAUNER: You know, there is no promises on the  
16 part of the Mass Media Bureau and these new silent station  
17 cases, I'm not sure what the policy is going to be with  
18 regard to them.

19 JUDGE LUTON: Yes. Everybody understands that Mr.  
20 Zauner made no promise of any kind. He is in no position to  
21 make any promises any more so than I am. I've got to say,  
22 my view is that the Commission would probably prefer to see  
23 the station live rather than die. I don't think the  
24 Commission would be interested in overriding a pretty good  
25 showing that the station will get back on the air one way or

1 the other. Mr. Cinnamon?

2 MR. CINNAMON: Yes, if I might ask one further  
3 question, based on what Mr. Zauner just said? Would such a  
4 schedule of the efforts the licensee made to bring this  
5 station back on the air include its assignment to somebody  
6 with the financial capabilities to put this station on the  
7 air? Or must that be done by the licensee? Is it the  
8 Commission's position that the licensee has to put the  
9 station on the air?

10 MR. ZAUNER: Right now, it would appear that the  
11 Bureau's policy is that it would have to be the licensee  
12 that would put the station back on the air. But I don't  
13 know of any precedent for this having occurred. That is,  
14 for an assignee having been designated who would put the  
15 station back on the air.

16 JUDGE LUTON: And I'm not aware of any such  
17 precedent either but it's rather difficult for me at this  
18 point to understand how, given what I believe to be the  
19 Commission's interest in seeing the station live rather than  
20 die, how some assurance from an assignee -- a proposed  
21 assignee.

22 MR. ZAUNER: I think the problem in --

23 JUDGE LUTON: I fail to see how that could hurt  
24 anything. Mr. Zauner, go ahead.

25 MR. ZAUNER: I think that the problem is, Your

1 Honor, that in the past, there have been situations like  
2 this, not ones that have been designated for hearings, but  
3 ones that have been handled on the processing line and the  
4 problem has been that the assignees have temporized in  
5 getting the station back on the air and there have been long  
6 periods of time of inactivity and extension requests --

7 JUDGE LUTON: In a situation in which the  
8 Commission has no control over the proposed assignee.

9 MR. ZAUNER: Right, right. And the feeling is  
10 that, based upon past experience, that they would rather see  
11 the commitment from the existing licensee than from an  
12 assignee.

13 MR. PETERSON: Your Honor, I have not had the  
14 opportunity to speak with Mr. Zauner directly, since we've  
15 played the continuous game of telephone tag, not at either  
16 one of our fault. It's just our schedules have never  
17 joined. One of the things that I would like to say, if I  
18 may, on behalf of the potential assignee that might help  
19 this matter is that they have -- we are all non-profit  
20 ministry organizations and the Vision Latina, who would be  
21 taking it over, they have been instrumental in helping us in  
22 the past, financially, as individuals from their respective  
23 church to the tune of about \$11,000.00, plus they bought  
24 considerable air time from us during our time of operation.

25 They were broadcasting from 3:00 in the afternoon

1     until 8:00 p.m. in Spanish -- Spanish gospel music in our  
2     community, and reaching approximately 10 times the people we  
3     were. And it was a tremendous loss when we had to go off  
4     the air because they could have financially kept the station  
5     on the air, but there were just too many other complications  
6     to allow them. And then, of course, trying to get the  
7     license transferred. And in the process of this whole  
8     fiasco, the former licensee, who was my creditor, who had  
9     given me credit to buy the station, said that they wanted  
10    the station back and I said, okay, fine. Let's just do the  
11    paperwork, conveyancing the foreclosure, which we started.  
12    And then they, however, drug their feet trying to sell the  
13    station before they would have to buy it.

14           The wanted to do a joint sale and assignment,  
15    which I don't even know if it's possible. And they drug  
16    this thing out to the very last week of the STA having told  
17    their legal counsel locally that they were not going to do  
18    anything. And so, this is where we are at.

19           And once again, Vision Latino has stepped in as a  
20    white knight to buy the thing, and help me see the license  
21    not falter. And if I was to have to put the station back on  
22    the air, it could only be through similar help that they  
23    have already given. They would be the people to come in and  
24    put up the money and help me get the station back on the  
25    air. They would be the ones that would purchase the assets

1 because they have all those agreements pending anyway -- and  
2 with the people who own the assets at this point. So, the  
3 tower site, basically, is what I'm talking about.

4 So, they are going to be intricately involved with  
5 me one way or the other and if there was any way that we  
6 might could do this joint assignment where -- or my bring  
7 the station back on the air, currently under an STA with  
8 them submitting their assignment application at the same  
9 time, simultaneously, so that they do not lose their  
10 financial interest, and I have the wherewithal to put the  
11 station back on the air.

12 And that's the consideration I'd like for Mr.  
13 Zauner to give that the original licensee, Church of the  
14 Christian Crusade, put me behind this eight ball and we've  
15 been trying to work our way out of it now since the last  
16 week of January.

17 MR. ZAUNER: Your Honor, I just would note that in  
18 July of 1995, His Direction made a request to remain silent.  
19 And in that request His Direction stated that it obtained an  
20 agreement with the mortgage holder of its assets and that an  
21 application for transfer of control of the licensee would be  
22 filed within 30 days of the date of its letter. Nothing was  
23 filed and this station has now been off the air since  
24 January 6, 1995. Almost 16 months. A little over 16  
25 months, I guess, at this point.



1           So, there has been plenty of opportunity for His  
2   Direction to transfer the station prior to the issuance of  
3   the order to show cause.

4           JUDGE LUTON: Okay. There is no need for you to  
5   respond to that now, Mr. Peterson.

6           MR. PETERSON: Okay.

7           JUDGE LUTON: Where are we with respect to the  
8   motion for leave to intervene? How's the time on that? May  
9   2nd is the date in which it was filed.

10          MR. ZAUNER: Right.

11          JUDGE LUTON: A response -- a position ought to be  
12   due sometime soon.

13          MR. ZAUNER: Yes, I think next week, I believe.  
14   Have you made a calculation, Mr. Cinnamon?

15          MR. CINNAMON: Assuming even four plus three -- I  
16   have --

17          JUDGE LUTON: Can you tell me without any detail  
18   really, what is it the Bureau is going to base its  
19   opposition on?

20          MR. ZAUNER: Lack of standing, I think.

21          JUDGE LUTON: Lack interest?

22          MR. ZAUNER: Lack of interest.

23          JUDGE LUTON: Not the kind --

24          MR. ZAUNER: There is no contract between the  
25   licensee and the intervenor.

1 JUDGE LUTON: That will be the main thrust of the  
2 motion, I take it?

3 MR. ZAUNER: At this point, I suspect that will  
4 be.

5 JUDGE LUTON: Okay. I wanted to know that so I  
6 can begin some preliminary looking myself. Yes, Mr.  
7 Cinnamon.

8 MR. CINNAMON: I was just going to say, it's our  
9 hope that we may be into the formal agreement. I mean, the  
10 only thing that held up the formal agreement was responding  
11 to the HDO. The partes are fully prepared to enter into the  
12 formal agreement. And with any luck, we will have it before  
13 the time period runs out for it.

14 JUDGE LUTON: Okay. Okay.

15 MR. ZAUNER: At that point, will you be intending  
16 to supplement your petition for leave to intervene?

17 MR. CINNAMON: I believe that would be our --

18 MR. ZAUNER: If that's the case, perhaps I should  
19 wait to file comments until the supplement is filed.

20 JUDGE LUTON: Well, that --

21 MR. ZAUNER: It doesn't make sense to file and  
22 then have them file something which essentially changes the  
23 nature of my comments.

24 JUDGE LUTON: That may well be, but on the other  
25 hand, you don't want to run the risk of nothing happening,

1     you know? It just may be that entering into the agreement  
2     will be delayed, and delayed, and delayed --

3             MR. ZAUNER: Right.

4             JUDGE LUTON: And nothing will happen. It just  
5     may be that -- you ought to deal with the motion as it  
6     stands.

7             MR. ZAUNER: Okay. Well, Mr. Cinnamon could at  
8     least give me a heads up when the thing is about to be filed  
9     and when it's about to be filed --

10            JUDGE LUTON: Certainly. Sure.

11            MR. ZAUNER: -- I will be able to take action.

12            JUDGE LUTON: I think so. All right, July 24th  
13     for the hearing, July 16, witness notification, and July 2nd  
14     for written exhibits. I don't have anything else. Does  
15     either party here? Mr. Peterson?

16            MR. PETERSON: (No audible response.)

17            JUDGE LUTON: Mr. Cinnamon?

18            MR. CINNAMON: (No audible response.)

19            JUDGE LUTON: Okay. Then I'm going to issue an  
20     order incorporating these dates, setting them out and we'll  
21     proceed accordingly. Thank you very much for your  
22     participation.

23            (Whereupon, at 9:25 a.m., the hearing was  
24     concluded.)


25     //

**REPORTER'S CERTIFICATE**

**FCC DOCKET NO.:** 96-70  
**CASE TITLE:** Under His Direction, Inc.  
**HEARING DATE:** May 8, 1996  
**LOCATION:** Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.


Date: 5/8/96

  
Official Reporter  
Heritage Reporting Corporation  
1220 "L" Street, N.W.  
Washington, D.C. 20005  
Raymond R. Freson

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

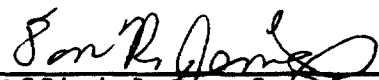
Date: 5/8/96

  
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Heritage Reporting Corporation  
Christine E. Perkins

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 5/9/96

  
Official Proofreader  
Heritage Reporting Corporation  
Don R. Jennings